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Lake County Association for the Retarded, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Case 13-CA-34133

July 12, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Pursuant to a charge and an amended charge filed on March 13 and 20, 1996, respectively, the General Counsel of the National Labor Relations Board issued a complaint on April 25, 1996, as corrected by an erratum dated May 21, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 13-RC-19058. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer to the corrected complaint admitting in part and denying in part the allegations in the complaint, and asserting several affirmative defenses.

On June 11, 1996, the General Counsel filed a Motion for Summary Judgment. On June 12, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 27, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding and denies that the information sought is relevant and necessary to the Union's role as bargaining representative.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.

ceeding.¹ We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues requiring a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

(i) names, addresses, dates of hire, rates of pay and job assignments of bargaining unit employees.

(ii) current policies regarding: paid holiday, vacation (length and method of payment), insurance (including life, medical, dental, vision, prescription drug, surgical hospital and weekly benefits, name of insurance carrier, amount of premium and how premium is paid), pension program, probationary period, shift premium payment, leave of absence, overtime payment method, hours of work (daily and weekly), last wage increase (the amount and the date), training programs (for production and maintenance employees), job classifications and labor grades, profit sharing or bonus plan, cost-of-living formula, pay or benefits during layoff, severance pay plan, company rules, disciplinary steps and job bidding or preference program.

The Respondent's answer admits that the Respondent refused to provide this information to the Union. Further, although the Respondent's answer denies that the information requested is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit employees, it is well established that such information is presumptively relevant and must be furnished on request. See, e.g., *Hotel Nikko Chicago*, 320 NLRB No. 99 (Mar. 11, 1996); *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Gary, Indiana,

¹In its response the Respondent challenges the General Counsel's assertion that the Respondent did not raise the issues of denial of due process and denial of a full and fair hearing in its request for review of the Acting Regional Director's Decision and Direction of Election. The Respondent correctly states that in a footnote in its request for review, it asserted that the Board should order a second hearing to permit it to present evidence regarding stipulated matters. That issue was considered by the Board in the representation proceeding and the Respondent does not raise any new or special circumstances that would require the Board to reexamine its decision.

has been engaged in servicing the needs of people with retardation and their families.² During the calendar year preceding the issuance of the complaint, the Respondent in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its Gary, Indiana facility products, goods, and materials valued at more than \$5000 directly from points outside the State of Indiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held on April 28, 1995, the Union was certified on January 31, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All residential supervisors, relief supervisors, program assistants, ARS facilitators, and SLIP trainers employed by the Employer at its facilities located in Lake County, Indiana, but excluding all professional employees, technical employees, confidential employees, guards, supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since January 22 and March 28, 1996, respectively, the Union has requested the Respondent to furnish information and to bargain, and since February 22 and April 8, 1996, respectively, the Respondent has refused. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after February 22 and April 8, 1996, to furnish the Union requested information and to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

²The unit, as described below, includes employees in the Respondent's residential division who are employed in certain classifications. In the underlying representation case, the record revealed that the Respondent operated 34 group homes.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Lake County Association for the Retarded, Inc., Gary, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All residential supervisors, relief supervisors, program assistants, ARS facilitators, and SLIP trainers employed by the Employer at its facilities located in Lake County, Indiana, but excluding all professional employees, technical employees, confidential employees, guards, supervisors as defined in the Act, and all other employees.

(b) Furnish the Union information on unit employees that it requested in its January 22 and March 28, 1996 letters.

(c) Within 14 days after service by the Region, post at its facility in Gary, Indiana, copies of the attached

notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 13 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 20, 1996.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 12, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All residential supervisors, relief supervisors, program assistants, ARS facilitators, and SLIP trainers employed by us at our facilities located in Lake County, Indiana, but excluding all professional employees, technical employees, confidential employees, guards, supervisors as defined in the Act, and all other employees.

WE WILL furnish the Union the information on unit employees that it requested in its January 22 and March 28, 1996 letters.

LAKE COUNTY ASSOCIATION FOR THE
RETARDED, INC.